

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FILED

CLERK'S OFFICE

MASSACHUSETTS DEVELOPMENT
FINANCE AGENCY
Plaintiff

04 APR -5 P 3:31

v.

ADP MARSHALL, INC., a FLUOR
DANIEL COMPANY, and FIREMAN'S
FUND INSURANCE COMPANY,
Defendants

DISTRICT COURT
DISTRICT OF MASS.CIVIL ACTION
NO. 04 CV 10203 PBS

ADP MARSHALL, INC.,
Plaintiff-in-Counterclaim

vs.

MASSACHUSETTS DEVELOPMENT
FINANCE AGENCY,
Defendant-in-Counterclaim

ADP MARSHALL, INC.,
Third-Party Plaintiff

ALLIED CONSULTING ENGINEERING
SERVICES, INC., ANDOVER CONTROLS
CORPORATION, R & R WINDOW
CONTRACTORS, INC., and DELTA
KEYSPAN, INC. n/k/a DELTA
KEYSPAN, LLC.

Third-Party Defendants

**THIRD-PARTY DEFENDANT, DELTA KEYSpan, INC.'S ANSWER TO THE
THIRD-PARTY COMPLAINT AND ITS JURY CLAIM**

**DELTA KEYSpan, INC. DEMANDS A JURY TRIAL ON ALL ISSUES SO
TRIABLE**

Now comes the third-party defendant, Delta Keyspan, Inc., now known as Delta Keyspan, LLC, and makes this its answer to the third-party plaintiff's third-party

complaint. Numbered paragraphs correspond to those in the third-party plaintiff's third-party complaint.

FIRST DEFENSE

1. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
2. The third-party defendant admits.
3. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
4. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
5. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
6. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
7. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
8. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
9. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.

10. The third-party defendant admits that it entered into a contract but has insufficient information or knowledge to admit or deny the remaining allegations of this paragraph.
11. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
12. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
13. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
14. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
15. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
16. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
17. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
18. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
19. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.

20. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
21. The third-party defendant denies.
22. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
23. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
24. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
25. The third-party defendant admits.
26. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
27. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
28. The third-party defendant neither admits nor denies the allegations as it is without information or knowledge sufficient to form a belief as to their truth.
29. The third-party defendant denies the allegations directed against it. The third-party defendant can neither admit nor deny the remaining allegations as it is without information or knowledge sufficient to form a belief as to their truth.

COUNT I

30. The third-party defendant restates its answers to the allegations contained in paragraphs 1 through 29 as if each were set forth fully herein.

31. The third-party defendant denies.

32. The third-party defendant denies.

WHEREFORE, the third-party defendant denies that the third-party plaintiff is entitled to any attorney's fees, payment of judgments, a decree declaring that the third-party defendant breached any contract or an order that it must indemnify or hold harmless the third-party plaintiff, or any other relief.

COUNT II

33.-35. Count II is not directed to Delta Keyspan, Inc. and Delta Keyspan, Inc. does not need to respond to the allegations contained in these paragraphs.

COUNT III

36.-38. Count III is not directed to Delta Keyspan, Inc. and Delta Keyspan, Inc. does not need to respond to the allegations contained in these paragraphs.

COUNT IV

39.-41. Count IV is not directed to Delta Keyspan, Inc. and Delta Keyspan, Inc. does not need to respond to the allegations contained in these paragraphs.

COUNT V

42. The third-party defendant restates its answers to the allegations contained in paragraphs 1 through 41 as if each were set forth fully herein.

43. The third-party defendant denies.

WHEREFORE, the third-party defendant denies that the third-party plaintiff is entitled to any attorneys' fees, payment of judgments against it, or any other relief.

COUNT VI

44.-45. Count VI is not directed to Delta Keyspan, Inc. and Delta Keyspan, Inc. does not need to respond to the allegations contained in these paragraphs.

COUNT VII

46.-47. Count VII is not directed to Delta Keyspan, Inc. and Delta Keyspan, Inc. does not need to respond to the allegations contained in these paragraphs.

COUNT VIII

48.-49. Count VIII is not directed to Delta Keyspan, Inc. and Delta Keyspan, Inc. does not need to respond to the allegations contained in these paragraphs.

SECOND DEFENSE

The third-party defendant says that plaintiff's and/or the third-party plaintiff's alleged loss and damages were caused in whole or in part by the plaintiff's and/or the third-party plaintiff's own negligence, which was greater than any negligence of the defendant.

THIRD DEFENSE

The third-party defendant says that the plaintiff's and/or the third-party plaintiff's alleged injuries and damage were caused by a person or persons for whose conduct the third-party defendant is not responsible.

FOURTH DEFENSE

The third-party defendant says that third-party plaintiff's suit is subject to dismissal because of insufficiency of service of process, pursuant to Fed. R. Civ. P. 12(b)(5) and/or insufficiency of process pursuant to Fed. R. Civ. P. 12(b)(4).

FIFTH DEFENSE

The third-party defendant says the alleged contract and indemnity provision is in violation of M.G.L. c. 149 §29C.

SIXTH DEFENSE

The third-party defendant says that this action was not commenced within the time required by the laws or contract provisions providing therefore.

SEVENTH DEFENSE

The third-party defendant says that third-party plaintiff's complaint fails to state a claim on which relief can be granted.

EIGHTH DEFENSE

The third-party defendant says that the third-party plaintiff's alleged loss and damages and injury was caused solely by the negligence and/or fault of the third-party plaintiff.

NINTH DEFENSE

The third-party defendant says that the alleged contract and/or indemnification agreement does not apply to the plaintiff's and/or the third-party plaintiff's loss and damages.

TENTH DEFENSE

The third-party defendant says that third-party plaintiff failed to comply with the terms and conditions of the alleged contract and/or indemnification agreement.

ELEVENTH DEFENSE

The third-party defendant says that the third-party plaintiff's liability to the plaintiff, if any, arises from the third-party plaintiff's sole, actual and primary negligence or wrongdoing and through no fault or negligence of the third-party defendant and that therefore the third-party plaintiff is not entitled to contribution or indemnity.

TWELFTH DEFENSE

The third-party defendant says that the plaintiff's and/or the third-party plaintiff's claims are waived and/or barred for failure to follow the terms of the contract.

THIRTEENTH DEFENSE

The third-party defendant says that the plaintiff and/or the third-party plaintiff's are estopped from making warranty claims because the contractual warranty period has lapsed.

FOURTEENTH DEFENSE

The plaintiff's and third-party plaintiff's are barred and/or precluded by the doctrine of res judicata (both issue and claims preclusion).

FIFTEENTH DEFENSE

The third-party defendant says that the effective term of any bond has lapsed.

SIXTEENTH DEFENSE

The third-party defendant says that the plaintiff and/or the third-party plaintiff failed to follow the procedure for making a bond claim.

SEVENTEENTH DEFENSE

The third-party defendant says that a claim cannot be made on a performance bond where a principal has substantially performed under the contract.

EIGHTEENTH DEFENSE

The third-party defendant says that the plaintiff's and/or the third-party plaintiff's claims are waived because it failed to follow the contract procedure for the resolution of damages in, and interpretation of the terms or scope of the contract and denials of or failures to act upon claims for payment for extra work or materials.

NINETEENTH DEFENSE

The third-party defendant says that the issues raised by this litigation are subject to arbitration and/or administrative process.

TWENTIETH DEFENSE

The third-party defendant says that any claim of the third-party plaintiff is barred by its failure to give adequate and timely notice.

TWENTY-FIRST DEFENSE

The third-party defendant says that the claims against it are barred by the doctrine of waiver and/or estoppel.

TWENTY-SECOND DEFENSE

The third-party defendant says that the claims against it are barred by laches.

TWENTY-THIRD DEFENSE

The claims against Delta Keyspan, Inc. are barred because Delta Keyspan, Inc. has performed all of its obligations under its agreement with ADP Marshall, Inc.

TWENTY-FOURTH DEFENSE

The claims against Delta Keyspan, Inc. are barred by the terms of its agreement with ADP Marshall, Inc.

TWENTY-FIFTH DEFENSE

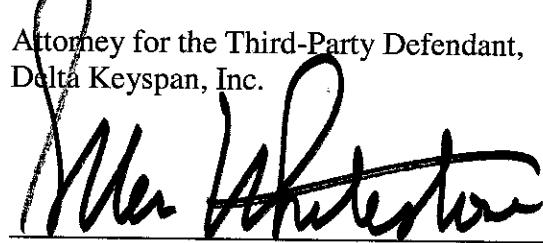
If the plaintiff establishes liability against ADP Marshall, Inc., it will be as a result of the direct and active negligence or other wrongdoing of ADP Marshall, Inc. and not as a result of alleged acts, errors or omissions of Delta Keyspan, Inc. Accordingly, ADP Marshall, Inc. would not be entitled to recover from Delta Keyspan, Inc.

TWENTY-SIXTH DEFENSE

Delta Keyspan, Inc. says that it has been misnamed. Its current name is Delta Keyspan, LLC.

**DELTA KEYSpan, INC., n/k/a DELTA KEYSpan, LLC CLAIMS A JURY
TRIAL TO THE FULLEST EXTENT PERMITTED BY LAW**

Attorney for the Third-Party Defendant,
Delta Keyspan, Inc.



Allen Whitestone, Esq.
Latronico, Black, Cetkovic & Whitestone
200 Berkeley Street
Boston, MA 02116
BBO# 526200
(617) 236-1900

CERTIFICATE OF SERVICE

I, Allen Whitestone, hereby certify that I have mailed the foregoing document, postage prepaid, to:

Edward F. Vena, Esq.
Charles A. Plunkett, Esq.
Vena, Riley, Deptula, LLP
250 Summer Street
Boston, MA 02210

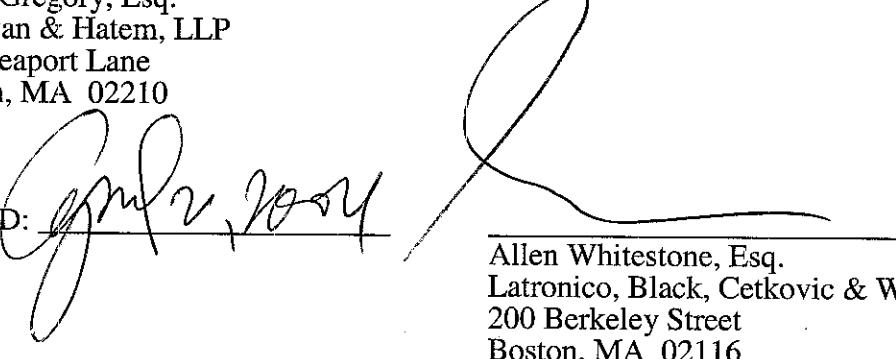
Andrew J. Tine, Esq.
Haese LLC
70 Franklin Street, 9th. Fl.
Boston, MA 02110

James J. Duane, III, Esq.
Edward Coburn, Esq.
Taylor, Duane, Barton & Gilman, LLP
111 Devonshire Street, 5th. Fl.
Boston, MA 02109

John J. McNamara, Esq.
Dwight T. Burns, III, Esq.
Domestico, Lane & McNamara, LLP
161 Worcester Road
Framingham, MA 01701

David J. Hatem, Esq.
Jay S. Gregory, Esq.
Donovan & Hatem, LLP
Two Seaport Lane
Boston, MA 02210

DATED: April 2, 2004


Allen Whitestone, Esq.
Latronico, Black, Cetkovic & Whitestone
200 Berkeley Street
Boston, MA 02116
BBO# 526200
(617) 236-1900